

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ROGER AND CONNIE NELSON,)	
)	NO. CV-10-0229-LRS
Plaintiffs,)	
-vs-)	
)	ORDER DISMISSING FEDERAL
)	CLAIMS AND REMANDING STATE
RECONSTRUCT COMPANY, NA AND BAC)	LAW CLAIMS TO CHELAN COUNTY
HOME LOAN SERVICING, LP, AND)	SUPERIOR COURT
JOHN DOES 1-20,)	
)	
Defendants.)	

BEFORE THE COURT is Defendants' Motion to Dismiss Pursuant to Fed.R.Civ.P. Rule 12(b)(6), Ct. Rec. 3, filed on July 29, 2010; and Plaintiffs' Motion for Leave to Amend Complaint,¹ Ct. Rec. 15, filed on September 14, 2010, both noted without oral argument.

In their Complaint, Plaintiffs state causes of action for (1) violation of the Truth in Lending Act, 15 U.S.C. § 1601 et seq. ("TILA"); (2) violation of the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 et seq. ("RESPA"); (3) violation of the Washington Consumer Protection Act ("CPA"); (4) breach of the covenants of good faith and

¹It appears that Plaintiffs filed this motion as part of their untimely response to Defendants' motion to dismiss as Plaintiffs did not note said motion for hearing.

1 fair dealing and (5) breach of contract. Plaintiffs also seek to restrain
2 the Trustee's Sale of their property.

3 The Defendants "removed" this action from Chelan County Superior
4 Court on July 22, 2010 based on 28 U.S.C. § 1331 (federal question
5 jurisdiction), 28 U.S.C. § 1367 (supplemental jurisdiction), and
6 28 U.S.C. §§ 1441 and 1446.

7 Defendants seek dismissal of all claims. As for the federal causes
8 of action, Defendants argue that Plaintiffs' Complaint fails to state a
9 claim for violation of the Truth in Lending Act, 15 U.S.C. § 1601 et seq.
10 ("TILA") or the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601
11 et seq. ("RESPA") because the alleged violations at issue are subject to
12 a strict one-year time limitation that has long since expired.
13 Defendants further assert that even if Plaintiffs' TILA and RESPA claims
14 were not time-barred, Plaintiffs' complaint does not identify any actual
15 violations of these statutes nor do they allege facts that would support
16 any such violations. In their response, which was filed untimely,
17 Plaintiffs concede that their federal claims (TILA and RESPA) are not
18 well pleaded. The court, having reviewed all pleadings, finds that these
19 federal claims are time-barred under the strict one-year time limitation
20 under 15 U.S.C. §1640(e) and 12 U.S.C. § 2614 and are hereby dismissed
21 with prejudice.

22 As for the state law claims, Defendants argue that the contract-
23 based claims are barred by the Statute of Frauds. Plaintiffs, on the
24 other hand, request that in the event the court dismisses their federal
25 claims, the state law claims be remanded back to state court. Plaintiffs
26 also indicate that they may need to bring in an additional party to

1 provide complete relief. Specifically, the Plaintiffs state they need
2 to join the predecessor in interest to defendant BAC Home Loan Servicing,
3 LP. To that end, Plaintiffs have moved for leave to amend their
4 Complaint.

5 Given the fact that the court is dismissing the federal claims, and
6 that the case now alleges purely state law claims, the court denies
7 Plaintiffs' request for leave to amend and remands the balance of state
8 law claims and Plaintiff's motion to amend to the state court for further
9 proceedings.

10 **IT IS HEREBY ORDERED** that:

11 1. Defendants' Motion to Dismiss Pursuant to Fed.R.Civ.P. Rule
12 12(b)(6), **Ct. Rec. 3**, filed on July 29, 2010, is **GRANTED in part** and
13 **DENIED in part**. The federal claims for violations of the Truth in
14 Lending Act, 15 U.S.C. § 1601 et seq. ("TILA") and the Real Estate
15 Settlement Procedures Act, 12 U.S.C. § 2601 et seq. ("RESPA") are
16 **DISMISSED** with prejudice.

17 2. The remaining state law claims are **REMANDED** to the Chelan
18 County Superior Court pursuant to 28 U.S.C. §1447(c)(lack of federal
19 subject matter jurisdiction).

20 3. Plaintiffs' Motion for Leave to Amend Complaint, **Ct. Rec. 15**,
21 filed on September 14, 2010, is **DENIED** without prejudice to renew the
22 same in state court in light of the above ruling, which remands all
23 remaining state law claims to state court.

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IT IS SO ORDERED. The District Court Executive is directed to file this order, **provide a certified copy to the Chelan County Superior Court,** and shall close this file.

DATED this 26th day of October, 2010.

s/Lonny R. Suko

LONNY R. SUKO
CHIEF UNITED STATES DISTRICT JUDGE